

Legal Writing:

Writing is an art but legal writing requires technical skill and knowledge. In order to master this art, one needs to be intellectually equipped and trained in the legal tradition which is constantly undergoing changes through the process of refinement according to adoptive mores and creative innovation. Personal style is more suitably appropriated to academic writing which has to be different for generation of scholarship and contribution to epistemology.

Legal writing is as old as the idea of law itself. Such writings of legal nature have been found in edicts inscribed in stones and other durable and non-durable media such as walls, columns, papyrus, earthen, clay-piece, parchment, leather, paper and even wax tablets etc. in different countries which are like spider writing in the process of historical evolution in the diverse legal systems and in as many languages.

Legal writing can be classified into two categories:

1. ***Professional legal writing***, and
2. ***Academic legal writing***

Professional legal writing are also of the variety of practicing lawyer's drafting and legal submissions (Bar) and writing judgments or judicial opinions (Bench). On the academic side, one can write scholarly articles for the journal (Scholarly) or for Newspapers (Journalistic) or write for Dissertation or thesis for academic awards. Each branch has its own requirements and techniques, and obviously they vary according to forum or floor of discussion.

Writing in Plain Legal English: Writing in clear, easy and intelligible language has caught the imagination of the new generation of legal writers and drafters in response to the demand and new realization that the changing scenario requires a break from the past practice. The aim of plain legal English is to make it immediately intelligible to as many of those as possible who are concerned with the relevant activities as well as to the lay persons.

There is growing trend of writing in plain language in drafting, pleading and communicating legal matters and contents, eliminating legalese as far practicable to make things easier and simpler.

Basically there are two types of legal writing. The first one adopts a balanced analysis of a legal problem or issue. Thus, in drafting inter-office memoranda and letters to clients, the lawyer must be sensitive to the needs, level of interest and background of the parties to whom it is addressed. The second type of legal writing is persuasive. So, appellate briefs and negotiation letters written on a client's behalf should be crafted to persuade his or her audience without provoking a hostile response through disrespect or by wasting the recipient's time with loaded information.

Basic Writing Skills:

- i. ***Words:*** Choose and use concrete words.
- ii. ***Spelling:*** Spelling must not only be correct but should be uniform in pattern.
- iii. ***Grammar:*** Grammatical mistakes are injurious to legal representation as it can convey altogether a different meaning than intended.
- iv. ***Punctuation:*** punctuation is important to keep things in place.
- v. ***Language:*** Writing in active voice is a better style.
- vi. ***Sentence:*** Short sentences are better than long ones.

Practicing Legal Writing:

Letters: letters written need be based on client-centric.

Briefs: Every legal document should begin with a summary of some kind. "All briefs should have a first- page, introductory summary, whether the rules require one or not".

Case analysis: in making an analysis, adoption of meaningful title and sub- titles must be considered and then be followed introduction, background, facts, court decision, analysis with break- ups, policy implication, smooth transition and conclusion.

Academic Legal Writing:

Paragraph:

- i. *Commonness*: paragraph lacking a common theme.
- ii. *Interlink*: Long paragraph and inadequate connection between paragraphs

Impractical:

- i. Unnecessary introductory clauses.
- ii. Other unnecessary Phrases.
- iii. Legalese
- iv. Unnecessary Abstractions
- v. Passive Voice

Analogy and Criticism:

- i. Clichés
- ii. Figurative phrases
- iii. Harsh criticism
- iv. Personalized criticism

Journals:

Journals are published at regular intervals (ranging from weekly to annually), and are an important source of legal material, legal periodicals contain articles, notes and comments on recent cases, information on recent legal developments, book reviews, and may also contain other information.

For any serious study, research and writing, it is essential to have a fairly good idea of what has been written in journals. Textbooks or casebooks, though a good source of information, do not usually offer the latest developments in law. Legal developments take place at such a fast pace that text book and book on 'cases and materials' often become out of date, as far as the recent position of the law in any specific area is concerned. Many of the subjects treated in law journals are not dealt with anywhere. Articles in journals contain scholarly discussion, comments,

analysis and criticism on a wide variety of legal problems, issues or questions which offer a valuable source of new ideas and knowledge.

Law journals may be divided into the following categories:

1. There are several journals, often published at short intervals, the basic aim of which is to keep members of the legal profession informed about recent developments and trends in law. They contain a few articles and provide reports and comments on statutes, recent cases, administrative regulations, and other information. Some examples are *New Law Journal*, *Solicitors Law Journal* (UK), *the Australian lawyer*, *Australian Business Lawyer* (Australia) *Company News and Notes*, *Chartered Secretary* (India).
2. There are academic journals (published in weekly, monthly, quarterly, bi-annually or annually) which contain scholarly articles on a wide variety of subjects, comments on recent cases and statutes, and book reviews. Some examples are *Law Quarterly Review*, *Public Law*, *Cambridge Law Journal* *Modern Law Review* (UK), *Australian Law Journal*, *Australian journal of Administrative law* (Australia) *Canadian Bar Review* *McGill Law Journal* (Canada), *Harvard Law Review*, *Yale Law Journal*(US), *Journal of the Indian Law Institute*, *Journal of the Constitutional and Parliamentary Studies*(India)
3. In a third category may be placed socialist journals dealing with specific areas of the law. These journals include both notes and comments on recent development in the concerned area and also longer articles. Some examples are: *Criminal Law Review* (UK) *Family Law Quarterly* (UK) *Australian Intellectual Property Journal* (Australia), *Criminal Law Journal*, *International Studies Income Tax Journal* (India).

Journals containing scholarly articles, comments and reviews are very useful source for those interested in research and writing. Journals are usually arranged in one alphabetical sequence in the periodical section of library. In some libraries, journals published within the country are placed together on designated selves whereas foreign journals are shelved separately. A list showing the title and the classification number of each journal is usually displayed at some prominent place.

Law Reports:

Cases decided by courts and tribunals are an important source of material in many types of legal research and writing. Courts and tribunals interpret and construe legal provisions and find and declare what the law or applicable principle on a particular point in question is? A vast majority of modern research studies and writings involve in some way or other a study of the relevant case law, making it a necessity for literature to be familiar with the law with the brilliant case law making it thus a necessity for a researcher to be familiar with the law reports, format of law reports and mode of citation of cases.

Indian courts sometimes cite English cases in situations where they find the English courts' approach on a specific point as establishing a rather new or refined principle which in the interest of justice may be helpful in finding a solution to a legal issue. English cases are not binding on Indian courts but the latter often treat them as of 'persuasive authority' and, where appropriate, refer to them. Cases decided by the Privy Council (before appeals to the Privy Council were abolished) are considered by Indian courts as authoritative precedents and are followed where relevant. Besides the Indian Law Reports, a familiarity with the English Law Reports is therefore necessary for any researcher. Now, there are many Law Reports existing at present:

(a) English Law Reports:

The best known series containing English cases are the *Law Reports*, the *Weekly Law Reports* and the *All England Law Reports*.

Law Reports:

The series was published in 1865 by the Incorporated Council of Law Reporting. The series is divided into four different parts, each publishing cases of different courts in the following manner:

- (i) **Appeal Cases (AC):** This series reports cases decided by the Court of Appeal and the House of Lords
- (ii) **Chancery Division (Ch):** It reports cases decided in the Chancery Division of the High Court of judicature.
- (iii) **Queen's Bench (QB):** It reports cases decided in the Queen's Bench division of the High Court, the Court of Appeal and the Divisional Court.

- (iv) **Family Division (Fam):** it reports cases decided in the family Division of the High Court.

Weekly Law Reports:

This series is published weekly by the Incorporated Council of Law Reporting and is later produced in three volumes year. It provides a comprehensive coverage of all the important House of Lords and Privy Council cases.

All England Law Reports:

This is a widely used private series, published by Butterworths. Its coverage is wide in that it publishes all cases worthy of reporting. The cases are reported in weekly parts and later produced in four volumes. Besides the above, some of the Law Reports are Butterworths Company Law Cases (BCLC), Criminal Appeal Reports, Family Law Reports, Housing Law Reports, and Industrial Cases Report (ICR).

(b) Indian Law Reports:

Law Reports: Moor's Appeals, 1836-1872, compiled by Edmund Moore, this series contains cases concerning appeals from the highest courts in India to the Privy Council in England.

Law Reports Indian Appeals, 1872-1950. This series contains the judgments of the Privy Council on appeals from India to the Privy Council.

Indian Cases, 1909-1947. This series includes cases from all the High Courts of India and the Privy Council.

Federal Court Reports 1939-1950. Cases decided by the Federal Court were published.

Now, after establishment of Supreme Court, several law reports are published officially as well as privately. These reports are:

Supreme Court Reports (SCR): this is a monthly publication which reports cases decided by the Supreme Court.

Supreme Court Cases (SCC): This report contains the cases decided by the SC and published by Eastern Book Company.

Supreme Court Journal (SCJ): This report publishes cases decided by the SC published by Madras Law Journal, Madras.

All India Reporter (AIR): This publication is one of the best known and widely used series, brought out monthly. It contains all the important cases decided by the SC and also reports selected cases decided by the various High Courts. It has a Journal section which publishes articles. It also includes notes of cases section and an Acts section.

Indian Law Reports (ILR): these reports contain cases decided by various High Courts. *ILR Allahabad, ILR Bombay* etc.

Beside the above mentioned, the Law Reports also published in various States. These are *Allahabad Law Journal, Bombay Law Reporter, Kolkata Weekly Notes and Madras Law Journal* etc.

Digests:

Digests play an important role in collecting cases on a particular subject. A textbook no doubt contains cases on the subject, nonetheless the author may omit cases not considered relevant by him and the case law may not be up to date. The main function of the digests is to refer to all the reported cases on the subject so that one may go through them.

The cases digested are arranged in alphabetical order and placed under subject headings. A digest of cases is a convenient source of information on reported cases as it provides the basic information on reported cases. Some digests also provide information as to whether a particular case has been followed, distinguished, overruled, explained, or merely considered in subsequent cases.

There are many good digests with abstracts of cases of the Supreme Court and High Courts. The most widely used one is Yearly Digest-a monthly published by the Madras Law Journal Ltd. There is an annual cumulative volume also. Cases are grouped and listed under the title of the Act concerned. A short summary of the facts, points involved and the final decision is given. The names of the parties are

not mentioned but the citations of all the relevant reports are listed. Therefore, in order to collect cases on a particular point, one has simply to consult the digest.

Since there is always sometime gap between the publications of the issues, it is advisable that the monthly parts of the case reports be consulted.

The All India Reporter Ltd. have also published digests of the case law from 1901. These are *AIR Fifty Years Digests*, 1901-1950 in 14 volumes, *AIR Fifteen Years Digests*, 1950-1965 in 14 volumes and *Yearly Digest*, 1 volume per year.

Besides the above, the following are exclusively devoted to Supreme Court cases: *AIR Supreme Court Digest*, *Complete Digest of Supreme Court Cases*, *Complete Supreme Court Criminal Digest* and *Supreme Court Yearly Digest*.

Manuals:

Manuals are also sources of information statutory rules, orders of the Government. The Government departments publish manuals from time to time which incorporate the latest rules and notifications etc., such as *Income Tax Manual*, *Civil Services Manual*.

Mode of Citation:

When we write an article, dissertation, thesis, book, or any other academic paper, we often used ideas, opinions or information found in various sources such as articles, books, reports, translated work, decided cases, laws passed by legislature, delegated legislation, unpublished papers. It is only appropriate that we cite, in our work, the source from where we have borrowed an idea or information. This is the common practice followed in the academic world. it has certain advantages:

- i. It makes the work authentic and reliable.
- ii. It gives information to anyone who will read the work as to what material has been consulted for the work or what material is available on the subject.
- iii. It saves us from any possible violation of copyright laws.
- iv. it is also, in many cases, our expression of acknowledgement and gratitude to the person whose work we have benefited from.

- v. A proper citation of legal authorities or other source material, and the preparation of Bibliography ensure that the work is free from plagiarism.

There are two methods of acknowledging the sources consulted by a person while preparing a paper, dissertation or thesis. One is *Author- Date System* and the other is *Documentary- Note System* (footnote citation and reference).

A. Author- Date System:

The system is widely used in the Social Sciences (such as sociology, political science, economics), and also in the field of law in some legal systems such as the US. The system provides brief information about the author, year of publication and page numbers in the body of the work or at the end of block quotations. The full information about the above is then provided at the end of the paper, dissertation, thesis, book or whatever work it is. This is done under some title such as 'Works Cited', 'Reference list', 'Literature Cited', 'Bibliography' or some other title, depending on what the author considers appropriate. As the references are cited in the text itself, the use of footnotes is only minimal. Only such information is provided in the footnotes which, though important, are not appropriate for inclusion in the text. The following principles apply in such a method.

Single Author:

In the case of single author, the surname (last name), if clearly identifiable, and the date of publication is given, the following method is used.

- i. friedman 1984 asserted that.....
- ii. Law can bring about social change, and social change itself often affects changes in law. (Cotterrell: 1984).
- iii. When material is quoted verbatim, the page number must be given. Cotterrell argued that 'law can do anything and everything to mould societies in accordance with legislator's wishes' (Cotterrell: 1984:7).

Two or Three Authors:

If a work has been jointly prepared by two or three authors, the last name of each author is given. For example:

The actual reference of the work is; James William Coleman and Donald R. Cressy, *Social Problems* (4th edition) New York: Harper and Row Publishers, 1990.

More than Three Authors:

For works having more than three authors, use the name of the first author followed by 'et al' (which means and others in Latin). The term 'et al' is not italicized. Thus for a work by Ravi, Ramsey, Harris and kapil, reference should be in bracket as follows (Ravi et al, 2020)

Organisations as Authors:

When a book or other word carries no individual author's name or group of author's name, on the title page and his published or sponsored by a corporation association, government agency or any other organization, the name of that organisation should be mentioned as author's name in text references these names should be used in full. For example, *World Health Organisation [WHO]: 1996*. The names of well known organisations are mentioned in the first citation and may be mentioned in abbreviated form in subsequent citations (WHO: 1996)

Anonymous Works:

Some works may carry no names of the author such as religious works or a piece of work in a newspaper or magazine. Such works may be cited by referring only to the title (and other information)

Several Works by the Same Author:

Works published by the same author in the same year are arranged alphabetically using the letters a, b, c etc, and full titles are given alphabetically by the title in the reference list [Hart: 1961a, 1961b].

When two or more sources are cited together, they should be listed in parenthesis (in bracket) in the text and separated by semicolons.(Hoffman 1977; George 1992; Lee1994).

B. Footnote/Endnote System(Documentary - Note System):

This method also known as the Documentary-Note style is an alternative to the Author-Date System described above. In the field of law, this system is commonly used in Commonwealth countries such as India, Sri Lanka, Australia, and Canada. Notes placed at the bottom of the page are called footnotes and those placed at the end of a work or chapters are called endnotes. The endnote system is no longer popular. The use of the footnote system is the common method used today. This method is convenient because it allows the reader to have knowledge of what is written on a page, without having to search for a reference at the end of a chapter or the whole work. In dissertations, thesis, journal, articles, books and other similar scholarly works, the system of specifying footnotes and later including a separate Bibliography is preferred.

Use of Notes, notes have several uses and purposes: (i) to cite the authority relied upon for specific facts, opinions, ideas or quotations in the text; (ii) to make cross references; (iii) to make comments, to explain or to qualify a statement or discussion made in the text. Also, to write something which the writer considered worthwhile to include but which he or she feels would not be appropriate in the main body of the work- the text; (iv) to acknowledge the work relied upon by the writer.

Now, *position of notes*, notes are arranged in numerical order (1, 2, 3 etc) at the bottom of the page (footnotes) or at the end of a chapter, article or other work (endnotes). A footnote must begin at the bottom of the page on which its reference is given, though it may extend to the bottom of the next page if the noted material is long. The length of a note should not normally exceed 10 lines. There is a difference in the method of citation when a reference is cited for the first time and when a reference is cited subsequently.

Citing for the first time, the first time a work is cited in a note, the entries should provide all the necessary information to the reader. it should include the name of the author (or editor, translator, compiler) in full form, the title of the work, edition (if any), the place of publication, the name of the publisher, the year of publication, the volume(if any), the page number. For a book to be cited, all this information,

except the page number(s) is found at the title page and the copyright page of the book. For a periodical, it can be found at the cover page and the article itself.

Citing a book:

The name of the author (or editor, translator or compiler) should be given in the same order as it appears on the title page such as Philip N. Kenny, Roger Cotterrell. Except for well-known authors who use only the initials of their given names (such as T.S. Eliot, D. H. Lawrence), initials should not be used if the author's given names are known.

Book by a Single Author:

When the book is written by a single author, the following order should be used: Author's name, Title of the book (in italic form or to be underlined), Edition, Place of Publication, Publisher, Year of Publication, Volume, page number. For example, Aqil Ahmad, *Mohammedan Law*, 25th edn., Allahabad: Central Law Agency, 2015, p.117.

Book by Two or Three Authors:

The name of all is given. Before the last name, the word 'and' is used. for example: Carol Bast and Margie Hawkins, *Foundation of Legal Research and Writing*, 2nd edition, New York: Thomson learning, 2000.

Rick H. Hoyle, Monica J. Harris and Charles M. Judd, *Research Methods in Social Relations*, 7th edition, U.S: Thomson Learning, 2000.

Book by More than Three Authors:

when a work is prepared by more than three authors, the usual practice is to mention only the first name followed by the term 'et al' (in some systems of citation written in Italic form) or by the use of and others. For example:

Boyce Singleton et al, *Approaches to Social Research*, New York: Oxford University Press, 1998.

Edited Book:

Example: Tony Greenfield (ed.), *Research Methods*, London: Arnold, 1996.

Book with No Author:

Example: *Encyclopaedia of photography*, New York: Crown, 1984.

Citing an Article from a Book:

Articles are sometimes published in edited books (or composite books) the order will be: author's name, title of the article (within inverted commas), title of the book(preceded by 'in'), name of the editor, place of Publication, year of Publication, page number. For example:

John Braithwaite, 'Criminological Theory and Organisational Crime' in David Nelkin (ed.) *White Collar Crime*, Hants: Dartmouth publishing Company Limited, 1994.

Citing an article from a Journal:

Usually, each journal has its own mode of citation which is normally printed on the first page (after the title cover). The current practice of most law journals is to print the mode of citation on the top or bottom of each page. The mode includes the name of the journal in abbreviated form, issue or volume number, and the year of Publication. When the journal itself has cited its own mode of citation then that should be followed. The following method is usually followed if an article published in a Law Journal is cited:

Name of the writer, the title of the article within inverted commas ('.....'), the name of the journal, the issue or volume number, the year, the page (p) or pages (pp). Example:

"Charles Gardener Geyh, 'The Endless Judicial Selection Debate and Why it Matters for Judicial Independence', *The Georgetown Journal of Legal Ethics*, VOL.21, 2008, P. 1259".

Citing an Article from a Magazine:

Example: Anita Bartholomew, 'After Life: The Scientific Case for the Human Soul', *Reader's Digest*, vol. 81, no. 486, September 2003, 58.

Citing an Article from Newspaper:

Example: Chris Richard, 'A Fair Deal for the Third World', *New Straits Times*, 2 February 2003 P. 6.

Citing an Encyclopaedia Article:

Example: The New Encyclopaedia Britannica, 15th edition, dress and adornment.

Citing Website Materials:

Justice P.D. Dinakaran v. Judges Inquiry Committee and another, 26 August, 2011, p. 14, Available at <http://indiankanoon.org/doc/593706/> accessed on 18/03/2020.

Citing a Case:

Example: *Maneka Gandhi v Union of India*, AIR 1978 SC 597.

List of Abbreviations used in Citation:

Ibid: (ibidem): in the same place; the same
i.e. : that is

Supra: earlier cited. Used in legal citation to refer to a source cited earlier in the text.

Infra: below, later in the text. Used in legal citation to refer to a source cited later in the text.

p.: page

pp.: pages

v., vs.: versus, against

For ILI (Indian Law Institute) citation style, you can access the link below:
<http://www.ili.ac.in/cstyle.pdf> .